

### Remarks/arguments

Claims 1 through 20 remain in the application. Claims 1, 2, 11, and 12 have been amended. Reexamination and reconsideration of the application as amended are requested. The examiner has rejected claims 1 through 8, 10 through 18 and 20 under 35USC102(b) as being anticipated by Nelson, et. al. 3737649. The examiner states that Nelson discloses a tubular member whose outer diameter over the area used for hitting a baseball is smaller than the diameter of a conventional bat over the area for hitting the baseball having a bore extending within the inner end through the distal end of said tubular member; a plurality weight members within said bore, an inner cap attached to the inner end of the tubular member for retaining the weight members within the bore and an outer cap attached to the distal end of the tubular member for retaining the weight members within the bore. The examiner goes on to state in as much structure set forth by the applicant in the claims, the devices capable of use in the intended manner if so desired.

Applicant transverses this statement. Patent number 3,737,649 to Nelson is a baton flashlight. Applicant did not believe that this baton flashlight could be used as a baseball bat without sufficiently doing damage

to the baton flashlight. After a few hits of the ball, clearly, the light of the flashlight would be broken and also probably, the switch. It would not take too many hits until the casing of the flashlight would be bent and dented and probably these bends and dents which would probably place the batteries out of alignment. In order for the claims of a new application cannot be anticipated by a patent if the patentable item, when used in the way put forth in the new application would destroy that patent's original function. Secondly, applicant believes that the bald end of the baton flashlight is as big as the end of the conventional bat over the surface used for hitting the ball. Thus, applicant does not believe that Nelson anticipates claims 1 through 8, 10 through 18 or 20.

Applicant has amended claim 1 so clearly now, Nelson does not anticipate claim 1. Claim 1 in the first element reads as follows: A tubular member whose length is similar to a conventional bat and whose outer diameter over the area used for hitting the ball is smaller than the diameter of a conventional bat over the area for hitting a ball, and whose outer surface is uniform having a bore extending within from an inner end to a distal end of said tubular member and said tubular member is made out of a material that will not be damaged when said tubular member is used as a bat;. Basis

for this amendment is found in the specifications on page 9, line 5 through... Basis for this is found in the specifications on page 7, lines 14 through page 8, line 9 and in drawing figures 1 through 5. Element B, the second element has also been amended. It now reads a plurality of weighted members that can be placed within the bore of said tubular member or can be fully removed from the bore of said tubular member and these weighted members allow an individual to change the weight of the tubular member and make the tubular member similar in weight to a conventional bat;. Basis for this is found in the specifications on page 9, line 19 through page 10, line 10.

Nelson clearly does not show a tubular member whose outer surface is uniform. Nelson is a flashlight, and in order for a flashlight to work it must have a switch on its outer surface. Clearly, Nelson shows the tubular member with a switch on its outer surface which would make the outer surface not uniform. Secondly, Nelson does not show a flashlight, the tubular member having sufficient strength to hit a ball. Thus, clearly claim 1 as now amended shows a bat system that is clearly not anticipated by Nelson and that is clearly patentable over Nelson. Secondly, the claim calls for weighted members which these weighted members allow an individual to change the weight of the tubular member and make the tubular member

similar in weight to a conventional bat. Clearly, Nelson does not have a set of weighted members that are designed to allow an individual to make the flashlight a similar weight to a conventional bat.

Applicant has amended claim 2. Claim 2 now claims a bat training system of claim 1 wherein each weighted member is positional within the tubular member so that the user can balance the tubular member and make its weight and balance similar to that of a conventional bat. Clearly, the weighted members of Nelson which are batteries and conductive spacer blocks were not designed nor could they ever be used to make the flashlight of a similar weight or balance to a conventional bat. Thus, Nelson clearly does not anticipate claim 2 and claim 2 is clearly unobvious over Nelson.

Claim 3 through 8 and 10 are dependent upon claim 1. Thus, the same argument that applies to claim 1 would also apply to claims 3 through 8 and 10. Thus, claims 3 through 8 and 10 are clearly not anticipated by Nelson nor are they also obvious over Nelson.

Claim 11 has been amended. In claim 11 the first element now reads "a tubular member whose length is similar to a conventional bat and whose

outer diameter over the area for hitting the ball is smaller than the diameter of a conventional bat over the area used for hitting the ball and whose outer surface is uniform, having a bore extending within from an inner end to a distal end of said tubular member and said tubular member is made of a material that is sufficiently rigid that it will not be damaged by hitting a ball. Basis for this is found in the specifications on page 7, line 14 through page 8, line 9. The second element has also been amended. The second element now reads "a plurality of weighted members that can be placed within the bore of said tubular member or it can be fully removed from the the bore of tubular member within the said bore and these weights allow the individual to change the weights of the tubular member and make the tubular member similar in weight to a conventional bat. Basis for this is found in the specifications on page 9, line 19 through page 10, line 10. As I pointed out above, Nelson does not show a tubular member whose outer surface is uniform. In order to form the flashlight of Nelson, the tubular surface must have a switch upon it. This switch is shown in the specifications figure 1 and figure 2a as number 60. This switch clearly makes the tubular member not uniform. Also, Nelson was not designed nor can the weighted members of Nelson be used to make the flashlight of a similar weight to a conventional bat. The weighted members of Nelson are basically batteries

and spacer blocks. These batteries and spacer blocks are, of course, not designed to make the flashlight similar in weight to the bat and in reality would not make the flashlight similar in weight to a bat. Thus, claim 11 is clearly patentable over Nelson. Is neither anticipated by Nelson nor made obvious by Nelson. Claim 12 has been amended. Claim 12 now claims the training bat system of claim 1 wherein each weighted member is positional within the tubular member so that the user can balance the tubular member and make the tubular member of similar weight and balance to a conventional bat. Clearly, the weights of Nelson were not designed to make the flashlight of similar weight or balance to a conventional bat. In reality, the battery and spacer bars could not make the flashlight of similar weight or balance to a conventional bat; thus, clearly claim 12 is not anticipated by Nelson. Claim 12 is also unobvious over Nelson by the reason stated above. Thus, claim 12 is clearly patentable over Nelson.

Claims 13 through 18 and 20 are dependent upon claim 11 or dependent upon a claim that is dependent upon claim 11. Thus, the same argument that applies to claim 11 would also apply to claims 13 through 18 and 20. Thus, claim 13 through 18 and 20 are patentable over Nelson.

The examiner has rejected claims 1 through 7 and 11 through 17 under 35USC102b as being anticipated by Parsons, patent number 5149092.

The examiner states that Parsons discloses a tubular member whose outer diameter of the area for hitting the ball is smaller than the diameter of a conventional bat over an area used for hitting the ball having a bore extending within from the inner end through the distal end and said tubular member a plurality of weighted members within said ball, an inner cap attached to said inner end of said tubular member for retaining the weighted members within the bore an outer cap attachable to said distal end of said tubular member for retaining the weighted members within said bore. The examiner goes on to say in as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired. Applicant transgresses this statement. Applicant states that since the weighted members are the extensions of the baton, the baton would not be of a sufficient length to be used as a bat.

Applicant has amended claim 1. The first element of claim 1 as put forth above calls for a tubular member whose length is similar to a conventional bat. Clearly, the baton of Parsons would not be of a similar length to a conventional bat without its extensions. Since the examiner is

using the extensions as weighted members, it would have to be within the tubular member, the baton of Parsons would not be of a similar length to a conventional bat. Applicant has also amended element 2 of claim 1 as he has put forth above. This element calls for weighted members that can be fully removed from the tubular member and for these weighted members to allow an individual to change the weight of the tubular member and make the tubular member a similar weight to a conventional bat. The baton of Parsons clearly does not show weighted members that could be removed from the tubular member. Also these weighted members would not make the tubular member of a weight similar to a conventional bat. Thus, clearly Parsons does not anticipate claim 1. Claim 1 would also be unobvious over Parsons. Thus, clearly claim 1 is patentable over Parsons.

Applicant has amended claim 2. As point out above claim 2 calls for the weighted members to be positional within the tubular member so that the user can balance the tubular member and make the tubular member's weight and balance similar to that of a conventional bat. Parsons' weights are not removable and the extensions to the baton would not make the tubular member weight and balance similar to a conventional bat. Thus claim two is patentable over Parsons and is not anticipated by Parsons.

Claim 3 through 7 are dependent upon claim 1. Thus, the same



argument that applies to claim 1 would also apply to claims 3 through 7. Thus, claims 3 through 7 are clearly not anticipated by Nelson nor are they obvious over Parsons.

Claim 11 has been amended as pointed out above. As I pointed out above, Parsons weighted members, the baton extensions, were not designed nor can the weighted members of Parsons be used to make the baton of a similar weight to a conventional bat. The weighted members of Parsons are batons extensions and are just hollow tubes. These hollow tubes are, of course, not designed to make the baton similar in weight to the bat and in reality would not make the baton similar in weight to a bat. Thus, claim 11 is clearly patentable over Parsons. Claim 11 is neither anticipated by Parsons nor made obvious by Parsons.

Claim 12 has point out above calls for weights that can be positioned with in the tubular member such that the tubular member would have the weight and balance of a conventional bat. Clearly, the weights of Parsons were not designed to make the baton of similar weight or balance to a conventional bat. In reality, the hollow tubes could not make the baton of similar weight or balance to a conventional bat; thus, clearly claim 12 is not anticipated by Parsons. Claim 12 is also unobvious over Parsons by the reason stated above. Thus, claim 12 is clearly patentable over Parsons.

Claims 13 through 17 are dependent upon claim 11. Thus, the same argument that applies to claim 11 would also apply to claims 13 through 17. Thus, claim 13 through 17 are patentable over Parsons.

The examiner goes on to state that claims 9 and 19 are unpatentable over Nelson as applied to claim 1 and 11 and further in view that the use of plastic is well known in the art. Applicant transverse this statement because he does not believe that plastic is well known in the art of making bats. However, applicant further points out that claim 9 is dependant upon claim 1 as know amended. Applicant has argued above that claim one is patentable over Nelson since the tubular member of claim 1 can be made of similar weight to a conventional bat and Nelson can not. Making the flashlight of Nelson out of plastic will not make it of similar weight to a conventional bat. Thus claim 9 is patentable over Nelson in view of the Official Notice.

As to claim 19 applicant points out that claim 19 is dependant upon claim 11 as know amended. Applicant has argued above that claim 11 is patentable over Nelson since the tubular member of claim 11 can be made of similar weight to a conventional bat and Nelson can not. Making the flashlight of Nelson out of plastic will not make it of similar weight to a conventional bat. Thus claim 19 is patentable over Nelson in view of the Official Notice.

The examiner has stated the claim 9 and 10 and 19 and 20 are unpatentable over Parsons as applied to claim 1 and 11 and further in view that the use of plastic and aluminum is well know in the art. Applicant transverse this statement because he does not believe that plastic is well known in the art of making bats. However, applicant further points out that claim 9 and 10 are dependant upon claim 1 as now amended. Applicant has argued above that claim 1 is patentable over Parson since weighed members can be removed from the tubular member of claim 1 and the tubular member of claim 1 can be made of similar weight to a conventional bat. The weighted members of Parsons can not be fully removed from the tubular member and the tubular member can not be made of similar weight to a conventional bat even if the tubular Member of Parsons is made out of aluminum or plastic. Thus claim 9 10 are patentable over Parsons in view of the Official Notice.

As to claim 18 and 19 applicant points out that claim 18 and 19 are dependant upon claim 11 as know amended. Applicant has argued above that claim 11 is patentable over Parsons since the tubular member of claim 11 can be made of similar weight to a conventional bat and Parsons can not. Making the baton of Parsons out of plastic or aluminum will not make it of similar weight to a conventional bat. Thus claim 19 and 20 are patentable


over Parsons in view of the Official Notice.

The examiner has rejected claims 1 and 11 under judicially created doctrine of obviousness-type double patenting. Applicant states that he is the owner of Patent No. 6,662,447 and that he has given his attorney the right to sign a terminal disclaimer and has included the proper fee. Thus, Applicant believes he has overcome this rejection.

Furthermore, it is believed the claims as amended define an invention which is unobvious over all US patents to Nelson and Parson, taken singularly or in combination. None of these references show weighted members that can be positioned within the tubular member that can make the tubular member of similar weight and balance to a conventional bat.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration of the rejection and objections is requested. Allowance of claims 1 through 20 at an early date is solicited.

Respectfully submitted,



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